

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.501, 17.8.505, and 17.8.514)	PROPOSED AMENDMENT
pertaining to definitions, air quality)	
operation fees, and open burning fees)	(AIR QUALITY)

TO: All Concerned Persons

1. On August 8, 2006, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., July 31, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) remains the same.

(2) "Portable facility" means an emitting source designated by the department in its database with the county code number "777," based on ability to move the source to other locations.

(3) "Wildland fire use" means the management of naturally-ignited fire to accomplish specific resource management objectives in predefined geographic areas. The term does not include fire on agricultural land.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (4)(b) remain the same.

(5) The air quality operation fee for facilities other than portable facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of \$470, plus ~~\$21.53~~ 22.30 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(6) The air quality operation fee for portable facilities is \$600.

(6) through (9) remain the same, but are renumbered (7) through (10).

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter with a diameter of 10 microns or less), sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

The amount of money the department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

The board is proposing to assess an annual flat fee of \$600 for portable facilities rather than basing their fee on emissions of air pollutants. A flat fee is more appropriate for portable sources than a fee based on emissions of air pollutants, because emission levels are not a good measure of the amount of staff resources required to regulate portable sources. Portable sources require approximately the same amount of regulatory review regardless of size.

There are 327 portable facilities that are currently paying annual fees ranging from \$470 to \$3,765. Changing the method of fee assessment for portable facilities to an annual flat fee of \$600 will keep the total fees collected for these sources the same.

This rulemaking would set the air quality operation fees to be billed in calendar year 2006. Air quality fees billed in 2006 will fund the department's activities in fiscal year 2007, and, for facilities other than portable facilities, would be based on emissions from calendar year 2005.

The legislative appropriation for fiscal year 2006 was \$2,902,420. The amount of the carryover from fiscal year 2005 was \$175,710. The total amount of pollutants reported for calendar year 2005 fees was 106,143 tons, and the per-ton component of the air quality operation fee was \$21.53.

The appropriation for fiscal year 2007 is \$2,996,826, an increase of \$94,406 from this fiscal year. The projected carryover from fiscal year 2006 is \$210,055. The total amount of pollutants reported for 2006 fees is 106,590 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge for facilities other than portable facilities to \$22.30. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$21.53 with \$22.30.

In calendar year 2005, the total amount of fees assessed was \$2,554,096. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,665,639, including \$196,200 for portable facilities and \$2,469,439 for nonportable facilities, for a total increase of \$111,543. In calendar year 2006, fees would be assessed for 623 facilities.

The board is proposing to amend ARM 17.8.501 to add a definition of "portable facility," because the term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.505 would institute a new method of fee assessment for portable facilities.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

(a) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (4)(b):

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous
appropriate calendar year,
multiplied by ~~\$10.87~~ 16.47; plus
tons of oxides of nitrogen emitted in the previous
appropriate calendar year,
multiplied by ~~\$2.72~~ 4.12; plus
tons of volatile organic compounds emitted in the
previous appropriate calendar year,
multiplied by ~~\$2.72~~ 4.12; or

(ii) remains the same.

(b) To conduct wildland fire use burning, an applicant for an air quality major open burning permit shall, in addition to submitting the fees specified in (4)(a), submit a fee of \$1,000.

(b) remains the same, but is renumbered (c).

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The board is proposing to amend ARM 17.8.501 to add the definition of "wildland fire use," because this term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.514 would institute a new fee for wildland fire use burning.

The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2007. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the

department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2005, the major open burners reported 6,070 tons of emissions, compared to 9,029 tons for calendar year 2004, or a decrease of 2,959 tons.

The operating budget for 13 major open burners in fiscal year 2007 is \$42,954, compared to a budget of \$42,141 for fiscal year 2006. The \$813 budget increase is due to increases of \$180 for rule publishing costs with the Secretary of State, \$1,000 for communications, \$661 for salaries, \$198 for benefits, and \$206 for indirect costs. These increases are offset by a \$32 decrease in travel, a \$1,000 decrease in technical support funding, and carryover of \$400 resulting from an increase of the minimum fee in FY 2006. The board is proposing to increase the permit fees from \$10.87 per ton of particulate, \$2.72 per ton of oxides of nitrogen, and \$2.72 per ton of volatile organic compounds emitted to \$16.47, \$4.12, and \$4.12 respectively.

The cumulative amount of the fees would equal the budget of \$42,954. This amount would be distributed among the 13 major open burners.

The board also is proposing to institute an additional fee of \$1,000 for applicants intending to manage naturally-ignited wildland fire use (WFU) burning. Applicants would be required to submit the fee prior to permit issuance for the year in which WFU burning would occur.

Decades of aggressive wildland fire suppression have resulted in large portions of forestland with a natural buildup of vegetative matter. Land managers are practicing progressive methods to protect forest health which includes the management of WFU. Congress, in part through the Healthy Forests Act, initiated an effort to restore forest health on federal lands to reflect natural conditions that existed prior to the implementation of aggressive wildland fire suppression activities. As a result of these developments, the practice of using WFU as a tool for managing federal lands has increased. The emissions from WFU affect the attainment and maintenance of air quality standards and visibility, and department staff time tracking and responding to WFU smoke impacts has increased. In order to fund activities associated with WFU, the board is proposing an additional fee for major open burners who intend to utilize WFU. The department expects to collect a total of \$2,000 in WFU fees from two permittees.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., August 15, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the agency Legal Services Bureau, has been designated to preside over and conduct the

hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David M. Rusoff
DAVID M. RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, June 12, 2006.